



DT02 Rec'd PCT/PTO 17 NOV 2004

PCT

Docket No.: 50341-041

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
	:	
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
	:	
Serial No.: 09/857,346	:	Group Art Unit: not yet assigned
	:	
Filed: June 04, 2001	:	Examiner: not yet assigned
	:	
For: CONTROL OF FLOWERING	:	

RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION

Mail Stop PCT
Commissioner for Patents
BOX PCT – Examiners Leonard Smith and
George M. Dombroske-PCT LEGAL OFFICE
Alexandria, VA 22313-1450

Sir:

This is in response to the Decision mailed September 17, 2004 setting forth a two month period for response. Accordingly, this response is due on or before Wednesday, November 17, 2004.

Reconsideration of the decision to deny the above-referenced application a filing date and §371(c) date of August 22, 2002 is respectfully requested. Applicant has provided sworn Declarations of two members of the staff of McDermott Will and Emery and the attorney who is handling the prosecution of this application, all of which swear that three Declarations containing the signatures of the five inventors were processed at McDermott Will and Emery and delivered to a courier for filing with the U.S.P.T.O. on August 22, 2002. Filing of the inventors' Declarations on August 22, 2002 completed the filing requirements under 35 U.S.C. § 371, which entitles the above-referenced application to a defensive date as prior art of August 22, 2002.

The sworn Declaration of Ms. Lorna Mullenax states that she received an executed Declaration from Pasquel Perez by facsimile and matched the Perez Declaration with the appropriate patent application file and other documents in the application which were to be filed with the U.S.P.T.O. in response to a Notice of Missing Requirements, and using established firm procedures, had the set of documents reviewed and signed by the undersigned attorney, made copies of each of the documents, clipped together the documents including the Perez Declaration, and handed the entire set of documents to a courier for delivery to the U.S.P.T.O.

The sworn Declaration of the undersigned attorney also states that she reviewed all of the documents, including the executed Perez Declaration, and the documents were copied and clipped together for delivery to the U.S.P.T.O.

The third sworn Declaration is the statement of Katherine Bell, Intellectual Property Coordinator at McDermott Will and Emery, stating that upon receipt of the Decision, mailed by the U.S.P.T.O. September 8, 2003, she reviewed the file for the above-referenced application and found a copy of the executed Perez Declaration among the papers that were filed on August 22, 2002 in response to the Notice of Missing Requirements mailed March 22, 2003.

Thus, applicant has provided the sworn statements of two McDermott Will and Emery staff members and a registered patent attorney of good standing, each of whom have been directly involved in the handling and prosecution of the above-referenced application since its filing with the U.S.P.T.O. and who aver that the Perez Declaration was delivered to the U.S.P.T.O., along with other documents, for filing on August 22, 2002. The Examiner has provided no reasoned argument for rejecting the sworn statements of these three individuals, but has simply maintained that applicant has not provided sufficient evidence that the Perez Declaration was filed.

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It is respectfully submitted that the sworn Declarations evidence the filing of a complete Declaration, including the Perez Declaration, on August 22, 2002. As such, Applicant is entitled to a §371(c)(1),(2) and(4) of August 22, 2002.

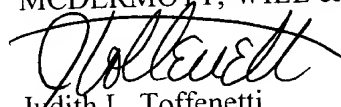
The present application is a U.S. national stage filing of PCT application, PCT/AU99/01079, which was filed December 2, 1999 and published June 8, 2000. Regardless of the filing and publication date of the PCT application, the present application is entitled to a date under 35 U.S.C. § 37(c) of August 22, 2000, the date on which the requirements of 35 U.S.C. § 371(c) were met.

Accordingly, it is respectfully requested that the decision to deny Applicant the earlier date under 35 U.S.C. § 371 be withdrawn and the application be granted a date under 35 U.S.C. § 371(1), (2) and (4) of August 22, 2002.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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